



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

FISH & RICHARDSON PC
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

COPY MAILED

In re Application of

DEC 07 2007

David Henry Levy

OFFICE OF PETITIONS

Application No. 10/053,264

DECISION ON PETITION

Filed: January 23, 2002

Attorney Docket No.

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed November 21, 2007, and in duplicate on that same date.

The petition is **granted**.

This application was held abandoned on September 28, 2007, after no reply was received to the "Notice of Allowance and Issue Fee Due" mailed June 27, 2007. The notice set forth a statutory period of reply of three months from its mailing date. Extensions under 37 CFR 1.136(a) were not available. No response was received within the allowable period and the application became abandoned on September 28, 2007. A Notice of Abandonment was mailed October 23, 2007. The instant petition was filed on November 21, 2007. Petitioner maintains that the notice of June 27, 2007, was never received and provides a copy of the relevant docketing calendar as proof of the same:

Section 711.03(c)(II) of the *Manual of Patent Examining Procedure* ("MPEP") provides that in order to establish non-receipt of an Office action so as to prove that the imposition of a holding of abandonment is improper, petitioner must: 1) provide a statement to the Office indicating that the Office action was not received by petitioner; 2) include in the statement an attestation to the fact that a review of the file jacket and docket records maintained by petitioner indicates that the Office action was not received; and 3) provide a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

Petitioner has met the burden of proof as established by Section 711.03(c)(II) of the MPEP. The holding of abandonment is, therefore, withdrawn.

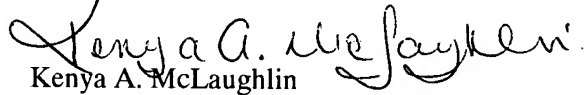
The Issue Fee Transmittal Form (PTOL-85B) filed November 21, 2007, is noted.

The application file is being forwarded to the Office of Patent Publications for further processing.

In re Application of David Henry Levy
10/053,264

Page 2

Questions concerning this decision should be directed to the undersigned at (571) 272-3222.

A handwritten signature in cursive script, reading "Kenya A. McLaughlin".

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions